

**Letter of Findings: 09-0025
Indiana Corporate Income Tax
For the Tax Year 2000**

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ISSUE

I. Corporate Income Tax—Net Operating Losses.

Authority: IC § 6-3-2-2; IC § 6-3-2-2.6 (as in effect during the audit period, amended effective 2004); IC § 6-8.1-5-1; *Riverboat Development, Inc. vs. Indiana Dep't of State Revenue*, 881 N.E.2d 107 (Ind. Tax Ct. 2008); *May Department Stores Company vs. Dep't of State Revenue*, 749 N.E.2d 651 (Ind. Tax Ct. 2001); *Chief Industries v. Indiana Dep't of Revenue*, 792 N.E.2d 972 (Ind. Tax Ct. 2000); *Hunt Corp. v. Dep't of State Revenue*, 709 N.E.2d 766 (Ind. Tax Ct. 1999); *Mynsberge v. Indiana Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999).

Taxpayer protests that the Department incorrectly calculated its net operating loss deduction.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation that is doing business in Indiana. Taxpayer filed an amended 2002 Indiana corporate income tax return showing an increase in its Indiana net operating loss. Taxpayer also filed an amended return for the 2000 tax year reporting an increase in its corporate income tax liabilities from a federal RAR modification, but claiming an offset of these RAR liabilities and a refund based upon a reduction of corporate income taxes from the carryback of the additional 2002 net operating loss deduction. The Department processed the 2000 amended return, found that Taxpayer had incorrectly computed its available net operating loss deductions for the 2002 tax year, and issued a proposed assessment for the additional corporate income tax due for the 2000 tax year. Taxpayer protested the assessment. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

I. Corporate Income Tax—Net Operating Losses.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department found that Taxpayer had incorrectly computed its 2002 net operating loss deduction that it carried back to the 2000 tax year and adjusted the deductions accordingly. The Department calculated Taxpayer's net operating loss using the formula provided in IC § 6-3-2-2.6 (as in effect during the audit period, amended effective 2004). Pursuant to IC § 6-3-2-2.6(b), "[T]he amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 of this chapter, for the same taxable year during which each loss was incurred."

IC § 6-3-2-2 in relevant part, provides:

(a) **With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana," for purposes of this article, shall mean and include:**

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation from a trade or profession conducted in this state; and
- (5) income from stocks, bonds, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana....

(b) Except as provided in subsection (l), **if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3)....**

...
 (g) Rents and royalties from real or tangible personal property, capital gains, interest, **dividends**, or patent or copyright royalties, **to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).**
(Emphasis added).

Accordingly, pursuant to IC § 6-3-2-2, a corporation's "adjusted gross income derived from sources within Indiana" means the portion of Taxpayer's business income that is deemed derived from Indiana sources in a percentage based upon the apportionment formula provided in IC § 6-3-2-2(b) plus the portion of Taxpayer's nonbusiness income that is allocated to Indiana as provided in IC § 6-3-2-2(g).

Taxpayer asserts that it refigured its net operating loss deduction correctly by excluding its dividend income, both foreign and/or domestic, from its adjusted gross income. Taxpayer maintains the dividends are not taxable under Indiana law because the dividends are not "adjusted gross income derived from sources within Indiana" as found in IC § 6-3-2-2(a)(5). Taxpayer contends that dividends are never deemed "business" or "non-business," but are always "sourced" to the state of taxpayer's domicile. In support of its argument, Taxpayer cites generally to *Chief Industries v. Indiana Dep't of Revenue*, 792 N.E.2d 972 (Ind. Tax Ct. 2000) and *Riverboat Development, Inc. vs. Indiana Dep't of State Revenue*, 881 N.E.2d 107 (Ind. Tax Ct. 2008).

However, Taxpayer's reliance on these cases is misplaced. First, *Riverboat Development* is not relevant because in that case the Tax Court addressed an out-of-state S-Corporation's duty to withhold on behalf of its non-resident shareholders, which is not at issue here. Second, *Chief Industries* is not relevant as the Tax Court examines a prior 1986 version of IC § 6-3-2-2(a)(5), as it relates to a taxpayer's gains from its sale of stock.

Third, in *Hunt Corp. v. Dep't of State Revenue*, 709 N.E.2d 766, 771 (Ind. Tax Ct. 1999) the Tax Court found that "in order to determine what income is attributable to Indiana, it must **first** be determined whether the income sought to be attributed is business or non-business income." **(Emphasis added)**. In fact, contrary to Taxpayer's suggestion, the Tax Court stated that, "States do not have to evaluate each income generating activity of the corporate enterprise in order to determine whether the income gained from that activity is properly taxable by the state. Instead the state may look at all of the income gained by the corporate enterprise's business activity and determine the state's fair share of that total." *Id.* at 769. Additionally, in *May Department Stores Company vs. Dep't of State Revenue*, 749 N.E.2d 651, 656 (Ind. Tax Ct. 2001), the Court further explained "[p]ursuant to Ind. Code § 6-3-2-2, for the purpose of calculating a corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while nonbusiness income is allocated to Indiana or another state." **"[W]hether income is deemed business or nonbusiness income determines** whether it is allocated to a specific state or whether it is apportioned between Indiana and other states wherein the taxpayer is conducting its trade or business." *Id.* **(Emphasis added)**.

Lastly, Taxpayer's interpretation of IC § 6-3-2-2 is contrary to the Tax Court's guidelines for statutory interpretation. The Department refers to the Tax Court's decision in *Mynsberge v. Indiana Dep't of State Revenue*, 716 N.E.2d 629, 632-633 (Ind. Tax Ct. 1999), for the issue of statutory interpretation:

When the Court is confronted with a question of statutory interpretation, the Court's function is to give effect to the intent of the General Assembly in enacting the statutory provision. See *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1227 (Ind. Tax Ct. 1998). In general, the best evidence of this intent is found in the language chosen by the General Assembly. See *Associated Ins. Cos., Inc. v. Indiana Dep't of State Revenue*, 655 N.E.2d 1271, 1273 (Ind. Tax Ct. 1995), review denied. However, the legislative intent as ascertained from an act or statutory scheme as a whole will prevail over a strict literal reading of any one particular statutory provision. See *Department of State Revenue v. Estate of Hardy*, 703 N.E.2d 705, 710 (Ind. Tax Ct. 1998) (citing *State Natural Resources Comm'n v. AMAX Coal Co.*, 638 N.E.2d 418, 429 (Ind. 1994); *Indiana Eby-Brown v. Department of State Revenue*, 648 N.E.2d 401, 403 (Ind. Tax Ct. 1995), review denied). Additionally, it is presumed that the General Assembly did not intend to enact a superfluous statutory provision, see *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 958 (Ind. Tax Ct. 1997), review denied, and therefore, the Court, when interpreting a statute, will endeavor to give meaning to every word in that statute. See *Guinn v. Light*, 558 N.E.2d 821, 823 (Ind. 1990). Finally, section 6-2.5-4-5 is a tax imposition statutory provision. Therefore, it is to be strictly construed against the imposition of tax. See *State Bd. of Tax Comm'rs v. Jewell Grain Co.*, 556 N.E.2d 920, 921 (Ind. 1990); *Tri-States Double Cola Bottling Co. v. Department of State Revenue*, 706 N.E.2d 282, 285 n.9 (Ind. Tax Ct. 1999). However, the policy of strict construction will not override the plain language of a tax imposition provision.

Taxpayer, in its interpretation of IC § 6-3-2-2, alleges that dividends are never business income or nonbusiness income, but are always "sourced," or allocated, to the state of the taxpayer's domicile. However, this interpretation would render the language chosen by the legislature in IC § 6-3-2-2(g) that "dividends... to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k)" superfluous. If Taxpayer's interpretation were correct, the legislature would have no need to include the "to the extent that they constitute nonbusiness income" language within the statutory scheme. Moreover, this plain language of the statute addresses the fact that dividends can be either business or nonbusiness and contradicts

Taxpayer's interpretation in providing that only the corporation's nonbusiness dividends are allocated. Furthermore, Taxpayer's interpretation fails to take into account the entire statutory scheme as a whole and looks to one part of a statutory provision in isolation.

Therefore, based upon all of the above, Taxpayer's dividend income was properly included in Taxpayer's adjusted gross income for the 2002 tax year decreasing the Taxpayer's net operating loss deduction that was available for carryback to the 2000 tax year.

FINDING

Taxpayer protest is respectfully denied.

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